

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**ELVIN FERMAN,**

**Plaintiff,**

**v.**

**DAVID FLORES, et al.,**

**Defendants.**

**Civil Action No. 23-16017 (SDW-JSA)**

**MEMORANDUM ORDER**

**IT APPEARING THAT:**

1. On or about September 5, 2023, Plaintiff Elvin Ferman initiated this action by filing a *pro se* prisoner civil rights complaint and an application to proceed without prepayment of the filing fee (“*in forma pauperis*” or “IFP application”) under 28 U.S.C. § 1915(a).

2. On October 3, 2023, this Court granted Plaintiff’s IFP application and dismissed his complaint without prejudice for failure to state a claim upon which relief may be granted. (ECF Nos. 3, 4.) Plaintiff had alleged that in September or October 2017, he became ill after a nurse negligently gave him the wrong medication; that he was ignored after being admitted to Jersey City Medical Center until he “went Code Blue;” and that the surgeon who performed his biopsy failed to drain the fluid from his lung. This Court dismissed without prejudice Plaintiff’s Fourteenth Amendment claim of inadequate medical care because allegations of negligence or malpractice are insufficient to state a constitutional claim. Plaintiff was granted leave to amend the complaint within 30 days, if, among other things, he could allege facts establishing that the medical defendants were not only negligent, but that they were deliberately indifferent to his serious medical needs. (ECF Nos. 3, 4.)

3. On October 25, 2023, Plaintiff filed an amended complaint and a new IFP application. (ECF No. 5.) In his amended complaint, Plaintiff alleges the conditions of his confinement in Hudson County Jail from October 2019 to the present violate the Constitution. Plaintiff did not raise the medical claims presented in his original complaint. Therefore, this Court construes the amended complaint as a new civil action and will direct the Clerk to open a new civil action and file the amended complaint as an original complaint. When the new action is opened, this Court will address Plaintiff's IFP application and screen his complaint under 28 U.S.C. § 1915(e)(2)(B).

**IT IS THEREFORE** on this 20th day of February 2024,

**ORDERED** that the Clerk shall reopen this matter; and it is further


**ORDERED** that the Clerk shall open a new civil rights action and file the amended complaint (ECF No. 5) under a Docket Heading "Complaint"; and it is further

**ORDERED** that the Clerk shall file Plaintiff's IFP application (ECF No. 5) in the new civil rights action; and it is further

**ORDERED** that the Clerk shall file a copy of this Order in the new civil rights action; and it is further

**ORDERED** that the Clerk shall serve a copy of this order and a docket sheet from the new civil action on Plaintiff by regular U.S. mail; and it is further

**ORDERED** that the Clerk shall close this case.

  
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Hon. Susan D. Wigenton,  
United States District Judge